

7/18/2022

RE: Case # 22-10964 (MG)  
Southern District of New York

Honorable Martin Glenn;

I am requesting that this letter be added to the court docket. I am writing today to request that Celsius customers with digital assets in CUSTODY accounts be allowed to withdraw their funds immediately.

I believe that the creditor committee will represent the top 1% of depositors who have their funds in the EARN account. Only 4% (\$180m) of customer funds according to Celsius is in their CUSTODY account. My request represents the custody account holders who hold the minority yet preferential position but will probably not have a say or representation on the committee.

Furthermore, I also believe that not making this a priority decision early in the process will subject custody users to sizable market fluctuation which is not the purpose of custody accounts.

Right now Celsius balance sheet shows \$180m in CUSTODY assets and \$180m in CUSTODY liabilities. Let's not let the market fluctuate this zero sum. Let's get the \$180m off the books now by allowing CUSTODY customers to withdraw according to the Terms of Service along with how custody accounts are handled with other financial companies.

There is a clear distinction between CUSTODY accounts and EARN accounts according to Celsius Terms of Service, as noted in their affidavit, by their own lawyer's admission, by the Trustee, how these accounts are separated within the Celsius app/platform and even on their court submitted balance sheet.

### **Ownership and Title**

Ownership and title of digital assets in CUSTODY accounts is clear. Ownership and title of digital assets in paragraph 4b of the Celsius Terms of Use dated April 14, 2022 says:

***"For clarity, crypto assets held solely in "Custody Service" do not earn rewards from the Earn program as crypto assets held in custody shall at all times remain with the user and Celsius will not transfer, sell, loan or other rehypothecate digital assets in custody unless specifically instructed by users."***

Further highlighted in the documents submitted to the courts on 7/14/22 whereas the difference in accounts types. First on Page 3 (See FIG. 1) where it is made clear that Custody accounts have different terms of use. This is later reinforced on Page 19 when it stated that Custody assets "shall at all times remain with the (user) (See Fig 1). Based on these statements it is clear that if the Custody assets remain unable to be withdrawn, Celsius is in clear violation with its own terms. In addition to this, the

First Day Presentation states that (for Custody accounts) "Title remains with customer and Celsius cannot use coins without instructions from the customer." (See Fig. 2)

We can see a clear difference in account types. I believe that in order to honor the verbiage in the terms of service and submitted court documents, assets in Custody should be allowed to be withdrawn and users should be able to choose another custodian immediately.

#### **Balance Sheet**

Celsius has clearly made an effort to delineate assets on its balance sheet and highlight Custody Assets as their own separate line item. (Fig. 3). As opposed to every other Asset and Liability on the balance sheet, please note that Custody accounts show a net zero balance for Celsius Network. These amounts each are listed as \$180 MM which indicates that customers should be made whole and reinforce the company's stated terms the Celsius did not have the right to "Transfer, sell, loan or otherwise rehypothecate" digital assets in custody" (FIG. 1)

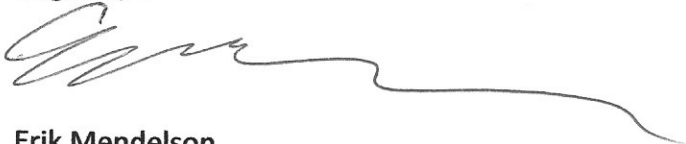
Thus, the crypto is with Celsius. This is not in dispute. Therefore, there should be no reason that the courts/Trustee shouldn't allow CUSTODY account assets to be withdrawn by users from the Celsius platform.

I fear that if this decision is left to the committee then they will represent the 96% of assets in EARN who will just vote against the 4% of assets in CUSTODY to serve their own interests regardless of Celsius Terms of Service or the aforementioned differences during Celsius first court hearing.

This request is for the withdrawal of like kind assets not USD. CUSTODY account holders want their digital assets back. 1 Bitcoin is 1 Bitcoin. And if they have it, we have an immediate right to it.

Appreciate your prompt consideration.

Regards,

A handwritten signature in dark ink, appearing to read 'Erik Mendelson', with a long horizontal flourish extending to the right.

Erik Mendelson